UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-2(c) **Greenbaum, Rowe, Smith & Davis LLP** Metro Corporate Campus One P.O. Box 5600 Woodbridge, New Jersey 07095 (732) 549-5600 Attorneys for A. Joseph Stern David L. Bruck, Esq.	
In re: **SHALOM TORAH CENTERS,** **Debtor(s).**	**Chapter 11 Proceeding** **Case No.: 10-15444-KCF**

BRIEF OF A. JOSEPH STERN IN OPPOSITION TO THE MOTION OF THE AVI CHAI FOUNDATION FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1), FOR WAIVER OF THE REQUIREMENTS OF FED. R. BANKR. P. 4001(a)(3), AND FOR CERTAIN RELATED RELIEF

Greenbaum, Rowe, Smith & Davis LLP
Metro Corporate Campus One
P.O. Box 5600
Woodbridge, New Jersey 07095
(732) 549.5600
Attorneys for A. Joseph Stern

Of Counsel:
David L. Bruck, Esq.

On the Brief:
Robert J. Flanagan, III, Esq.

PRELIMINARY STATEMENT

The Avi Chai Foundation ("Avi Chai"), the Secured Creditor, has filed a motion seeking relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), for waiver of the requirements of Fed. R. Bankr. P. 4001(a)(3), and for certain related relief with respect to Shalom Torah Centers' (the "Debtor") property at 14 Amboy Road, Marlboro, NJ 07746 (the "Property"). This Court should deny Avi Chai's motion because there is no "cause" for the relief sought, the Debtor has equity in the Property, Avi Chai is adequately protected by the payment of current debt service on the Amboy first mortgage and the Property is necessary for a successful reorganization plan.

STATEMENT OF FACTS

The Debtor is a not-for-profit school providing education and religious training to Jewish children. On February 25, 2010, the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of New Jersey. The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No creditors' committee or trustee has been appointed in this Chapter 11. The Debtor has until August 15, 2010 to file a proposed plan for reorganization with the Court.

The Debtor owns and operates its school in East Windsor and Marlboro, New Jersey. The Marlboro Property, which is encumbered by the Avi Chai mortgage at issue serves as the main school operated by the Debtor and is necessary to any successful reorganization. Stern is a present and past donor of the religious schools owned and operated by the Debtor. Certification of A. Joseph Stern in Opposition to the within

Motion ("Stern Cert."), ¶ 1. Several years ago, in connection with the acquisition and funding of the school, Stern introduced the Debtor to then Amboy National Bank, now known as "Amboy Bank" and requested that Amboy provide financing to the Debtor. Stern Cert., ¶ 2. Amboy did provide financing to the Debtor and made a series of loans enabling the Debtor to acquire its existing schools and also to fund its operation. Id. In order to facilitate the financing, Stern agreed to guarantee repayment of the loans to Amboy. Id.

One of the loans made by Amboy to the Debtor encumbers the Marlboro property. Stern Cert., ¶ 3. Amboy's loan on the property is approximately $2,100,000. Id. For nearly two years, Stern has been making the debt service payments to Amboy for the mortgage on this Property and has continued to do so post petition. Id. Avi Chai holds a second mortgage on the Property in the approximate amount of $612,000. Id.; Stern Cert., ¶ 7. On June 22, 2009, Amboy had an appraisal performed of the Marlboro property at $5,200,000. Stern Cert., **Exhibit B.**

On August 2, 2010, this Court entered an Order: (i) authorizing the Debtor to obtain post-petition financing from Stern; (ii) authorizing Debtor to enter into a modification of its existing mortgages with Amboy Bank ("Amboy") which modification includes the delivery, in escrow, of deeds in lieu of foreclosure to Amboy; (iii) modifying the automatic stay to permit the delivery, in escrow, of deeds in lieu of foreclosure to Amboy, the releasing of those deeds from escrow in the event of a default by the Debtor under the modification agreement, and matters pertaining thereto; and (iv) granting post-petition liens to Amboy and Stern, and priority administrative expense status to Stern. Stern Cert., **Exhibit A.** Pursuant to the Order, Stern has agreed to continue making the debt service payment to Amboy through August, 2012 or until the Amboy loans are satisfied, whichever comes first. Stern Cert., ¶ 4, 5.

Stern is paying the current debt service on the Amboy first mortgage encumbering the Property. The Avi Chai mortgage is non interest bearing.

LEGAL ARGUMENT

POINT I

THE COURT SHOULD DENY AVI CHAI'S MOTION BECAUSE IT HAS FAILED TO PROVE THAT THERE IS CAUSE FOR RELIEF.

This Court should deny Avi Chai's motion to vacate the automatic stay because Avi Chai has failed to establish that there is "cause" for such relief, and its interest in the Property is adequately protected.

The automatic stay provision is one of the most fundamental protections granted to a debtor under the Bankruptcy Code. See In re Krystal Cadillac Oldsmobile GMC Truck Inc., 142 F.3d 631, 637 (3d Cir. 1998). The automatic stay is intended to provide the debtor with a "breathing spell from [its] creditors. It stops all collection efforts, all harassment, all foreclosure actions and all continuations of the judicial actions commenced prior to the bankruptcy proceeding. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove [it] into bankruptcy." Borman v. Raymark Indus., Inc., 946 F.2d 1031, 1033 (3d Cir. 1991) (quoting H.R. Rep. No. 95-595, 95t' Cong., 1St Sess. 340 (1977)); see also 11 U.S.C. § 362(a)(1).

The Court may only lift the automatic stay for "cause" shown. See 11 U.S.C. § 362(d)(1). Section 362(d)(1) of the Bankruptcy Code provides that:

> A court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay -
>
> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d)(1).

The party seeking relief from the stay "bears the burden of proof on a motion for relief from the automatic stay." In re Ward, 837 F.2d 124, 128 (3d Cir. 1988); see also 11 U.S.C. § 362(g). "Cause" for relief from the automatic stay is not defined in the Bankruptcy Code. See In re Wilson, 116 F.2d 87, 90 (3rd Cir. 1997). Moreover, no rigid test has been established for determining whether, pursuant to section 362(d)(1), sufficient cause exists to modify the automatic stay. In re Continental Airlines. Inc., 152 B.R. 420, 424 (Bankr. D. Del. 1993). Instead, "in resolving motions for relief from the automatic stay, Courts generally consider the policies underlying the automatic stay and the competing interests of the debtor and the movant." Id. See also In re Dupell, 235 B.R. 783, 788 (Bankr. E.D. Pa. 1999); In re Lippolis, 228 B.R. 106, 111-12 (Bankr. E.D. Pa. 1998). Given the importance of the automatic stay, the Third Circuit has determined that "cause" to terminate the automatic stay must be analyzed under the totality of the circumstances. Wilson, supra, 116 F.2d at 90.

The absence of "cause" to lift the automatic stay can be demonstrated by showing that the movant is adequately protected. Dupell, supra, 235 B.R. 783, 789 (Bankr. E, D. Pa. 1999). Adequate protection "may be provided in a variety of ways." Id. at n.10. For example, adequate protection may be provided by showing the existence of an equity cushion, by creation of a replacement lien, by providing cash payments to the secured creditor, or by offering a viable plan of reorganization that meets the debtor's obligations to the secured creditor. Id.

In this case, it is apparent that there is no "cause" to terminate the automatic stay, and that Avi Chai is adequately protected. First, the aggregate balance of the Amboy first mortgage ($2,100,000) and the Avi Chai second mortgage ($612,000) is $2,712,000. The appraisal of the Marlboro Property submitted herewith is $5.2 million. Accordingly, there is an equity cushion of approximately $3.1 million behind the Amboy first mortgage, which is more than adequate to protect Avi Chai. Stern Cert, ¶ 7. Second, under the Court's August 2, 2010 Order, Stern is making the Debtor's debt service payments to Amboy. Avi Chai is not prejudiced because the Amboy loan is protected under this order; and there is no threat of foreclosure to Avi Chai, nor is the debt in arrears. Further, not only is Avi Chai protected from any increase in the amount of the Amboy first mortgage, but the Avi Chai mortgage is not interest bearing, so it does not diminish the equity cushion. Finally, the Debtor will be submitting a plan of reorganization in the near future, and the Property is necessary to a successful reorganization. In light of the foregoing, it is apparent that there is no "cause" to terminate the automatic stay, and thus, this Court should deny Avi Chai's motion.

POINT II

THE COURT SHOULD DENY AVI CHAI'S MOTION BECAUSE THE DEBTOR HAS SIGNIFICANT EQUITY IN THE PROPERTY AND THE PROPERTY IS NECESSARY TO AN EFFECTIVE REORGANIZATION.

This Court should deny Avi Chai's motion for relief from the automatic stay because it has failed to establish either prong of 11 U.S.C. § 362(d)(2).

Although Avi Chai claims it is entitled to relief for "cause," when the stay is of an act against property, the movant must demonstrate that the debtor has no equity in the property and that the property is not necessary for the effective reorganization. 11 U.S.C. § 362(d)(2). "Whether property is necessary for an effective reorganization requires an examination of whether there is "a reasonable possibility of a successful reorganization within a reasonable time." In re Sea Garden Motel and Apartments, 195 B.R. 294, 308 (D.N.J. 1996) (citing United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 376, 98 L. Ed. 2d 740, 108 S. Ct. 626 (1988)). Thus a party is not entitled to relief from the automatic stay if there are reasonable prospects of a successful reorganization. Id.

Avi Chai cannot demonstrate either of the two prongs of 11 U.S.C. § 362(d)(2). First, as stated supra, clearly there is equity in the property in this case. An appraisal performed on June 22, 2009 valued the Property at $5,200,000. The appraisal is not controverted. There is an equity cushion of approximately $3.1 million behind the Amboy first mortgage, which is more than adequate to protect Avi Chai's interest.

Second, the Property is necessary for any reorganization. The Debtor is a not-for-profit school. The Marlboro Property serves as the main school operated by the Debtor. It is axiomatic that the Property is necessary to Debtor's operation. Therefore, the Property is necessary for a successful reorganization.

Finally, there is a reasonable prospect that the reorganization will be confirmed within a reasonable length of time. The Court deadline for the Debtor to submit a plan for reorganization is August 15, 2010. The Debtor has recently obtained funding from Stern to assist with the Amboy mortgage which was critical to funding its reorganization.

Stern, an unsecured creditor with a significant claim, will support this proposed plan, which will weigh in favor of approval.

CONCLUSION

For the reasons set forth above, the Avi Chai's motion for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), for waiver of the requirements of Fed. R. Bankr. P. 4001(a)(3), and for certain related relief should be dismissed.

GREENBAUM, ROWE, SMITH & DAVIS LLP
Counsel for A. Joseph Stern

By: ______________________________
David L. Bruck, Esq.

Dated: September 7, 2010

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